IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:-

THE HONOURABLE MR. JUSTICE K.PADMANABHAN NAIR

WEDNESDAY, THE 21ST MARCH 2007 / 30TH PHALGUNA 1928

M.F.A.No.902 of 2001(C)

O.P.(M.V).NO.1423/1996 OF THE MOTOR ACCIDENTS CLAIMS TRIBUNAL, THIRUVANANTHAPURAM.

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APPELLANT/APPLICANT:-

D.I.SREEKALA, D/O.INDIRA, SREEBHAVAN, KEELIODE, PERUMPAZHUTHOOR P.O., NEYYATTINKARA, THIRUVANANTHAPURAM.

BY ADV. SRI.P.PUSHPARAJAN

RESPONDENTS/RESPONDENTS:-

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1. K.HABEEB, S/O.KASSIM PILLAI, T.C.10/1970(A), MEDAYIL HOUSE, MANCHADIMOODU, VATTIYOORKAVU P.O., THIRUVANANTHAPURAM.

2. THE NATIONAL INSURANCE CO. LTD., REPRESENTED BY THE DIVISIONAL MANAGER, NATIONAL INSURANCE CO. LTD., DIVISIONAL OFFICE, VAZHUTHACAUD, THIRUVANANTHAPURAM.

R2 BY ADV. SRI.JOE KALLIATH.

THIS MISCELLANEOUS FIRST APPEAL HAVING BEEN FINALLY HEARD ON 21/03/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

K.Padmanabhan Nair,J.

M.F.A.No.902 of 2001-C

Dated, this the 21st day of March, 2007

JUDGMENT

The applicant in O.P.(M.V.).No.1423 of 1996 on the file of Motor Accidents Claims Tribunal, Thiruvananthapuram is the appellant. The appellant sustained injuries in a motor vehicle accident at about 7.30 A.M. on 13.5.1996. She filed the Original Petition claiming compensation impleading the owner-cum-driver of the vehicle as well as the Insurer. The Tribunal found that the accident occurred due to the negligence of the driver and the appellant sustained injuries. It was further held that going by the nature of injuries, the appellant is entitled to get a compensation of Rs.48,900/-. But, the Tribunal further found that the appellant also contributed to the accident and as such she is entitled to get only one-half of the amount.

2. A perusal of the records shows that the owner-cum-driver did not appear and contest the case. The Insurer had not taken a contention that there was contributory negligence. It is solely relying on the scene mahazar prepared in the criminal case

that the Tribunal found that the appellant also contributed to the accident. The Tribunal did not consider the evidence of the appellant. Merely because the police prepared a mahazar to the effect that the accident occurred 2.05 metres west from the eastern tar end portion, it is not possible to hold that the accident occurred due to the negligence of the appellant. Even assuming that the accident occurred while the appellant was crossing the road, that alone is not a ground to hold that she contributed to the accident. The materials on record show that at the place of occurrence the road lies north-south. The appellant was walking along the eastern side. She deposed that the car came from behind and hit her. There is nothing on record to show that there was not enough space for the car to pass without hitting the victim. So, the Tribunal went wrong in assuming that the appellant also contributed to the negligence. That finding of the Tribunal is liable to be set aside. I hold that the accident occurred due to the rash or negligent driving of the vehicle by the 1st respondent. The vehicle is covered by a valid policy of insurance. So, the 2nd respondent is liable to pay the entire compensation. But, for the additional compensation, the Insurer is liable to pay

interest only at the rate of 7% per annum.

In the result, the appeal is allowed in part. The appellant is given an additional compensation of Rs.24,450/- (Rupees twenty four thousand four hundred and fifty only) with interest at the rate of 7% per annum from the date of petition till date of realisation. The amount shall be deposited by the Insurer.

K.Padmanabhan Nair
Judge

vku/-